

## § 2.705

which will determine the sufficiency of the grounds alleged.

(d) If a presiding officer or a designated member of an atomic safety and licensing board becomes unavailable during the course of a hearing, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel, as appropriate, will designate another presiding officer or atomic safety and licensing board member. If he becomes unavailable after the hearing has been concluded:

(1)(i) The Commission may designate another presiding officer to make the decision; or

(ii) The Chairman of the Atomic Safety and Licensing Board Panel or the Commission, as appropriate, may designate another atomic safety and licensing board member to participate in the decision;

(2) The Commission may direct that the record be certified to it for decision; or

(3) The Commission may designate another presiding officer.

(e) In the event of substitution of a presiding officer or a designated member of an atomic safety and licensing board for the one originally designated, any motion predicated upon the substitution shall be made within five (5) days thereafter.

[27 FR 377, Jan. 13, 1962, as amended at 31 FR 16310, Dec. 21, 1966; 35 FR 11459, July 17, 1970; 35 FR 12649, Aug. 8, 1970; 40 FR 51996, Nov. 7, 1975; 40 FR 53379, Nov. 18, 1975; 56 FR 29408, June 27, 1991]

## § 2.705 Answer.

(a) Within twenty (20) days after service of the notice of hearing, or such other time as may be specified in the notice of hearing, a party may file an answer which shall concisely state:

(1) The nature of his defense or other position;

(2) The items of the specification of issues he controverts and those he does not controvert; and

(3) Whether he proposes to appear and present evidence.

(b) If facts are alleged in the specification of issues, the answer shall admit or deny specifically each material allegation of fact; or, where the party has no knowledge or information sufficient to form a belief, the answer

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may so state and the statement shall have the effect of a denial. Material allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be controverted.

(c) If a party does not oppose an order or proposed action embodied in or accompanying the notice of hearing, or does not wish to appear and present evidence at the hearing, the answer shall so state. In lieu of appearing at the hearing, a party may request leave to file a statement under oath or affirmation of reasons why the proposed order or action should not be issued or should differ from that proposed. Such a statement, if accepted, will be accorded whatever weight is deemed proper.

## § 2.706 Reply.

A party may file a reply to an answer within ten (10) days after it is served.

[27 FR 377, Jan. 13, 1962, as amended at 43 FR 17801, Apr. 26, 1978]

## § 2.707 Default.

On failure of a party to file an answer or pleading within the time prescribed in this part or as specified in the notice of hearing or pleading; to appear at a hearing or prehearing conference, to comply with any prehearing order entered pursuant to § 2.751a or § 2.752, or to comply with any discovery order entered by the presiding officer pursuant to § 2.740, the Commission or the presiding officer<sup>4</sup> may make such orders in regard to the failure as are just, including, among others, the following:

(a) Without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter such order as may be appropriate; or

(b) Proceed without further notice to take proof on the issues specified.

[37 FR 15131, July 28, 1972]

<sup>4</sup>When a reference is made to the Commission or the presiding officer in this subpart and a presiding officer has been designated, the specified action will be taken by the presiding officer, unless otherwise provided.